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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/275,097	03/24/1999	JOHN C. BURNS	53921/64	9336
23553	7590	07/12/2006	EXAMINER HARPER, KEVIN C	
MARKS & CLERK P.O. BOX 957 STATION B OTTAWA, ON K1P 5S7 CANADA			ART UNIT 2616	PAPER NUMBER

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/275,097

Applicant(s)

BURNS ET AL.

Examiner

Kevin C. Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 12-22 and 34-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 47-59 is/are allowed.
- 6) ☐ Claim(s) 12 and 34-36 is/are rejected.
- 7) ☐ Claim(s) 13-22 and 37-46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 1, 2006 has been entered.

***Response to Remarks***

Applicant requested clarification on the Examiner's statement of a request for reconsideration of a final office action. This sentence in the Response to Arguments section of the December 29, 2005 office action was in error and should be disregarded.

Applicant commented on the appropriateness of the final office action on December 29, 2005. Applicant noted that no amendment was made to justify a final office action. However, Applicant amended the claims in July 2003 and any (every) subsequent office action having a new ground of rejection only related to these amended claims is properly made final (MPEP 706.07 (a)). Although these claims were initially indicated as allowable, the subsequent rejection of these claims is properly made final because applicant was given one chance to respond to the original rejection in the April 9, 2003 office action. Accordingly, the subsequent rejection was necessitated by the amendment of these claims. Applicant also noted that a new reference was not used in making a new ground of rejection according to Form Paragraph (FP) 7.50. However, if this FP were required in the previous office action, then a new ground of rejection could not be made and the form paragraph would have precedence over 35 USC 103.

***Response to Arguments***

Applicant's arguments filed May 1, 2006 related to the priority order of selection in the specification on page 32, lines 13-20 have been fully considered and are persuasive. Therefore, the previous rejection and claim objection relating to claims 13 and 37 has been withdrawn.

Applicant's arguments concerning the Arslan reference have been fully considered but they are not persuasive.

1. Applicant argued that Arslan does not disclose a logical trunk having a variable carrying capacity for connections. However, the connections (circuits) in Arslan are carried by channels (col. 3, lines 23-27; col. 17, lines 40-51; col. 18, lines 20-22) where a number of channels form a link (col. 4, lines 40-49). The capacity of the link is reduced when a channel fails (col. 3, lines 23-27; note: a channel is link capacity for providing transport functions for circuits; col. 7, lines 7-10; col. 18, lines 20-25).
2. Applicant argued that the combination of Hsing in view of Arslan does not suggest sending release messages in order based on a priority indicator. However, Hsing discloses releasing connections, whereby release messages are sent in order to restore a connection and Arslan teaches in the same field of endeavor that connections are released in order of priority so that higher priority connections are re-established before lower priority connections. Therefore, Hsing in view of Arslan discloses sending release messages in a priority order as connections are released in a priority order. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge

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gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 12 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsing (US 6,167,025) in view of Arslan et al. (US 5,444,693).

3. Regarding claims 12 and 34-35, Hsing discloses an apparatus having means performing a method of releasing switched connections from a network entity (fig. 1 and fig. 2, item 220B; fig. 4A) in a signaling communications network (col. 13, lines 5-17). The switched connections are routed across the communication network (figs. 1 and 3-4) and are established between source and destination entities (col. 7, lines 35-44) using connection establishment request messages (col. 8, lines 29-60).

4. However, Hsing does not disclose that a priority indicator is associated with each connection of a variable capacity trunk and that connections are released in order of priority. Arslan discloses a restoration that takes place upon detection of a reduction of the capacity of a logical trunk sufficient to sustain only a reduced number of connections (col. 7, lines 7-10; note: only some connections on a link fail). A stored priority indicator for failed connections is stored in a look-up table (col. 5, lines 12-15 and 23-26; col. 5, lines 3-11) and the failed connections are released in sequence according to priority (col. 6, lines 38-52; col. 8, lines 40-47). A message containing the failed connection's priority indicator and the source and destination of the connection is transmitted (col. 9, lines 29-34 and 47-50; col. 8, lines 48-55 and 59-63).

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have priority indicators for connections and propagate connections release messages according to the priority of the connections in the invention of Hsing in order to establish alternate paths first for higher priority connections after a network outage (Arslan, col. 5, lines 23-31).

### ***Allowable Subject Matter***

Claims 47-59 are allowed.

Claims 13-22 and 37-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:00 AM to 7:00 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To, can be reached at 571-272-7629. The centralized fax number for the Patent Office is 571-273-8300. For non-official communications, the examiner's personal fax number is 571-273-3166 and the examiner's e-mail address is kevin.harper@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications associated with a customer number is available through Private PAIR only. For more information about the PAIR system, see [portal.uspto.gov](http://portal.uspto.gov). Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kevin C. Harper", written in a cursive style.

Kevin C. Harper

July 8, 2006